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No. 88-1905

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In The

Supreme Court of the United States  
October Term, 1989

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EDDIE KELLER, et al.,

*Petitioners,*

v.

STATE BAR OF CALIFORNIA, et al.,

*Respondents.*

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On Petition For Writ Of Certiorari  
To The California Supreme Court

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BRIEF OF CALIFORNIA LEGISLATURE AS  
AMICUS CURIAE IN SUPPORT OF RESPONDENTS

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## KELLER v. STATE BAR OF CALIFORNIA

BRIEF OF CALIFORNIA LEGISLATURE  
AS AMICUS CURIAE  
IN SUPPORT OF RESPONDENTS

The California Legislature submits this brief, amicus curiae, pursuant to Rule 36 of the Rules of the Supreme Court of the United States, in support of respondents in No. 88-1905, having obtained the written consent of both petitioners and respondents to file this brief. The written consent has been filed with the Clerk.

## INTEREST OF AMICUS CURIAE

The California Legislature does not believe that the facts or questions of law will not be adequately represented by the parties. However, the California Legislature thinks that it can give a different perspective to the Court to aid in its examination of the issues presented in this matter. The amicus curiae brief of the California Legislature will emphasize matters relating to the interest of amicus curiae with respect to its view of the State Bar as a governmental agency and with respect to the role the State Bar serves in the legislative process.

## SUMMARY OF ARGUMENT

The California Legislature and the California Supreme Court have determined that the State Bar is a governmental agency and that lobbying, filing of amicus curiae briefs, and holding an annual conference of delegates are within the scope of the State Bar's authority.

The structure, purposes, and powers of state governmental agencies are matters within the sovereign power of state government and federal courts should defer to the decision of state courts on these matters. Therefore, this Court should not disturb the determination of the California Supreme Court regarding the structure and powers of the State Bar.

Furthermore, the State Bar, as a governmental agency, serves an important governmental interest in improving the administration of justice and advancing the science of jurisprudence. It plays an important role in the legislative process through its linkage with the Judicial Council, and by the fact that it is a major source of valuable information to the Legislature on legislative proposals, providing its legal expertise in both procedural and substantive areas relating to the science of jurisprudence and the administration of justice. Additionally, petitioner and supporting amici urge the Court to limit the States Bar's participation in "political" and "ideological" issues based on standards applied to labor unions. However, these labels are inappropriate in the context of the State Bar's activities. The issues pertaining to the administration of justice and the science or jurisprudence are inherently political and ideological and, therefore, the application of those labels would have a far-reaching sweep and would, in effect, permit those who disagree with the positions of governmental agencies to exercise a veto over governmental speech.

## ARGUMENT

### I. DEERENCE SHOULD BE GIVEN TO THE DETERMINATION BY THE CALIFORNIA LEGISLATURE AND SUPREME COURT THAT THE STATE BAR OF CALIFORNIA SHOULD BE CONSIDERED A GOVERNMENTAL AGENCY AND THAT LOBBYING, AMICUS CURIAE BRIEFS, AND THE CONFERENCE OF DELEGATES ARE WITHIN THE SCOPE OF THE STATE BAR'S STATUTORY AUTHORITY

The Supreme Court of California below determined that the California Constitution, statutes, and judicial decisions "envision the [State Bar of California] as a governmental agency," (Joint Appendix (J.A.) Volume III at 566) and that lobbying, amicus curiae briefs, and the conference of delegates are within the scope of the State Bar's statutory authority (J.A. Vol. III at 578, 585-586). The California Supreme Court has correctly characterized the State Bar as a governmental agency and correctly interpreted its statutory authority. Whatever the status and powers of integrated bar associations in other states, the State Bar of California is a governmental agency under California law and, under California law, it has the power to lobby, file amicus curiae briefs, and hold an annual conference of delegates in order to advance the science of jurisprudence and improve the administration of justice. This is the intention of the State Constitution and the State Legislature as confirmed by the State Supreme Court.

Unlike a labor union or other private association, the State Bar of California was created by statute and its structure and powers are delineated by the State Constitution and statutes. The California Constitution specifies

that the State Bar is a public corporation.<sup>1</sup> Cal. Const. art. VI, Sec. 9. The California Constitution also authorizes the State Bar to appoint members to two other governmental agencies that are within the Judicial Branch: the Judicial Council and the Commission on Judicial Performance. Cal. Const. art. VI, Secs. 6 and 8.

The California Business and Professions Code further delineates the structure and powers of the State Bar. Cal. Bus. & Prof. Code Sec. 6000, *et seq.*<sup>2</sup> Under these provisions, the State Bar is governed by a 22 member Board of Governors. Secs. 6010 and 6011. Six members of this board are public members, four appointed by the Governor and one each appointed by the Senate Committee on Rules and the Speaker of the Assembly. Sec. 6013.5.<sup>3</sup> All but one of the remaining members of the Board are elected by the members of the State Bar from geographic districts, but the procedures for these elections and the districts themselves are delineated by statute. Secs.

<sup>1</sup> As the California Supreme Court noted, it is significant that all other public corporations in the State – water districts, school districts, reclamation districts, etc. – are clearly considered governmental entities. Conversely, no labor union or professional association is classified as a public corporation. J.A. Vol. III at 568.

<sup>2</sup> Unless otherwise indicated, all further California statutory citations are to the Business and Professions Code.

<sup>3</sup> As noted by the California Supreme Court, public "consumer representatives" are common on state regulatory boards, but no law permits the Governor or the Legislature to appoint nonmembers as officers of a labor union or private association. J.A. Vol. III at 569.

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6012-6019.<sup>4</sup> All meetings of the State Bar Board of Governors are required to be open to the public, except for matters statutorily excepted. Sec. 6026.5.<sup>5</sup>

State Bar revenues are derived principally from an annual membership fee which is set by the Legislature. Sec. 6140. In addition to these general membership fees, the Legislature has required the State Bar to collect additional fees from attorneys to support a discipline monitor and an independent expert to study the State Bar's affirmative action program, both of whom report directly to the Legislature. Secs. 6032, 6086.9, and 6140.9.

In its regulation and oversight, the Legislature considers the State Bar as a unitary governmental agency. The State Bar, like other governmental agencies, is required to submit its proposed budget to the Legislature

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The Governor and Legislature also appoint members of certain committees of the State Bar. Secs. 6046.5 and 6086.11. In addition, the Supreme Court and the Legislature appoint or approve the appointment of certain State Bar staff. Secs. 6079.1, 6079.5, and 6086.65. Public officials do not appoint committee members or staff of unions or other private associations.

<sup>4</sup> The provisions setting forth the State Bar districts have recently been amended; beginning in July 1990 the State Bar will be required to adjust the counties included in the districts every 10 years, pursuant to statutory guidelines. 1989 Cal. Stat. 1223.

<sup>5</sup> Again, as noted by the California Supreme Court, similar requirements apply to governmental regulatory boards in California, but not to unions or private associations. J.A. Vol. III at 569.

for approval, including "estimated revenues, expenditures, and staffing levels for *all of the programs and funds administered by the State Bar.*" Sec. 6140.1, emphasis added. And, as an agency provided for in Article VI of the California Constitution, the State Bar is required to have an itemized statement of total expenditures and disbursements open for inspection. Cal. Gov't Code Sec. 6261. The State Bar is also required annually to present "written and oral progress reports on *all the State Bar programs* to the Judiciary Committees of the Senate and Assembly." Sec. 6140.35, emphasis added. Finally, unlike any union or professional association, *all* property of the State Bar is "held for essential public and governmental purposes" and is exempt from taxation. Sec. 6008, emphasis added.

The State Bar, through its Board, is charged with the enforcement of the Business and Professions Code provisions pertaining to attorneys. Sec. 6030. These duties include investigating complaints concerning the conduct of attorneys and, after a hearing conducted by a statutorily authorized State Bar Court, recommending to the Supreme Court that attorneys be disciplined. Sec. 6075, *et seq.* The State Bar is also responsible for examining all applicants for admission to practice law and certifying to the Supreme Court those applicants who fulfill the requirements. Secs. 6046, 6047, and 6060, *et seq.*

In addition, by statute, the State Bar is given the power to "aid in all matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice. . ." Sec. 6031(a). This provision and others anticipate that the State Bar's

assistance in these matters is to be provided to the Judicial, Executive, and Legislative Branches of the Government.<sup>6</sup>

With regard to the Judicial Branch, the State Constitution, as noted above, requires the State Bar to appoint members to the Judicial Council and the Commission on Judicial Performance.<sup>7</sup> Cal. Const. art. VI, Secs. 6 and 8. The State Bar is also required by statute to participate with other governmental agencies in contracting for the publication of the official reports of California judicial decisions (Cal. Gov't Code Sec. 68903) and to cooperate and give assistance to the Commission on Judicial Performance (Cal. Gov't Code Sec. 68725). In addition, the State Bar provides assistance to the Judicial Branch by filing *amicus curiae* briefs in litigation affecting the bar or its members. J.A. Vol. III at 565 and 573.

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<sup>6</sup> In contrast, labor unions serve a much more limited function of promoting the self-interest of their members in labor-management interactions. The only governmental purpose for requiring membership in and contributions to labor unions is to promote labor peace by avoiding the "free-rider" problem. *Abood v. Detroit Board of Education*, 431 U.S. 209, 222 (1977).

<sup>7</sup> The Judicial Council has the constitutional duty to "improve the administration of justice" by making recommendations to the courts, the Governor, and the Legislature and by adopting rules for court administration, practice and procedure. Cal. Const. art. VI, Sec. 6. The Commission on Judicial Performance is responsible for investigating complaints concerning the conduct of judges and recommending to the Supreme Court that judges be disciplined. Cal. Rules of Court, rule 901, *et seq.*

By statute, the State Bar is required to assist the Executive Branch by evaluating the judicial qualifications of gubernatorial nominees for judicial appointment. Cal Gov't Code Sec. 12011.5. In addition, the State Bar is to aid the Legislative and Executive branches through assistance to the California Law Revision Commission. Cal. Gov't Code Sec. 8287.<sup>8</sup>

The State Bar also provides assistance to the Legislature by proposing legislation and evaluating legislative proposals of others relating to the administration of justice and science of jurisprudence. This is the function performed by the State Bar's lobbying activities. The authority of the State Bar to participate in the legislative process is no different than that of other governmental agencies in California. By statute, the California Legislature has determined that governmental agencies like the State Bar may support or oppose legislation deemed beneficial or detrimental to the agency. *See, e.g.*, Cal. Gov't Code Secs. 8246, 50023, and 53060.5.

Petitioners and supporting amici urge this Court to review the determination of the California Supreme Court that the laws of California "envision the [State Bar of California] as a governmental agency" (J.A. Vol. III at 566) and that lobbying, *amicus curiae* briefs, and the conference of delegates are within the scope of the State Bar's statutory authority (J.A. Vol. III at 578, 585-586). In

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<sup>8</sup> The majority of the members of the California Law Revision Commission are appointed by the Governor (Cal. Gov't Code Sec. 8281), but the topics of the Commission's studies must be approved by the Legislature (Cal. Gov't Code Sec. 8293).

addition, they propose various criteria for such review.<sup>9</sup> Although federal courts may be justified in specifying the proper purposes of labor unions based on the pervasive system of federal regulation that has preempted state labor law, *Local 926, International Union of Operating Engineers v. Jones*, 460 U.S. 669, 675-677, 680-681 (1983), the structure, purposes, and powers of state governmental agencies are matters that are peculiarly within the sovereign power of state government, and the federal courts should defer to the decisions of state courts with regard to these matters. As this Court stated over 100 years ago:

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<sup>9</sup> Petitioners and supporting amici suggest a number of criteria for the review they propose. First, they would distinguish between mandatory and discretionary functions: only functions clearly mandated would be considered the acts of a governmental agency; discretionary functions would be suspect. *Brief Amicus Curiae of the American Civil Liberties Union in Support of Petitioners*, pp. 4, 11; *Brief Amicus Curiae for the Ad Hoc Committee Opposing Lobbying and Certain Other Activities of a Mandatory Bar in Support of Petitioners*, p. 5. Second, they would distinguish based on the source of agency funds: agencies funded by general taxation would be considered governmental agencies; those funded from other sources would be suspect. *Petitioners' Opening Brief (Pet. Op. Br.)*, pp. 10, 22; *Brief Amicus Curiae of the American Civil Liberties Union in Support of Petitioners*, pp. 11-12; *Brief Amici Curiae of the Washington Legal Foundation and the Attorney General of New Mexico in Support of Petitioners*, pp. 4, 15; *Brief Amicus Curiae of Gibson in Support of Petitioners*, pp. 2, 6-8; *Brief Amicus Curiae of Joseph W. Little*, pp. 18-19. Third, they would distinguish between legislatively established agencies that do and do not govern a portion of the state; those entities governing a geographic portion of the state would be considered government agencies; those that do not

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"It is undoubtedly a question of local policy with each state what shall be the extent and

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would be suspect. Pet. Op. Br., pp. 22, 23; Brief Amici Curiae of the Washington Legal Foundation and the Attorney General of New Mexico in Support of Petitioners, pp. 4, 15; Brief Amicus Curiae of the National Right to Work Legal Defense Foundation in Support of Petitioners, pp. 6-9; Brief Amicus Curiae of Trayton L. Lathrop in Support of Petitioners, pp. 3-5. None of these criteria are useful for distinguishing between governmental agencies and private organizations.

The mandatory-discretionary dichotomy would place an impossible burden on state legislatures. Legislatures are not in a position to mandate every function within a government agency's scope of authority. For government to function effectively, government agencies must exercise discretion both in the focus of their activities and in selecting the means to carry them out. For example, by statute, many governmental agencies in California have general authority to participate in the legislative process. See p. 8, *supra*. This participation is discretionary with the agency because it is unrealistic to expect the Legislature to anticipate in advance all cases in which agency input would be helpful. Moreover, the legislative process is furthered by permitting governmental agencies wide latitude in providing input to the Legislature rather than setting out rigid guidelines in advance that will become the focus of extraneous disputes interfering with the flow of information into the legislative process. Finally, in connection with the State Bar, the Legislature has specifically rejected attempts to impose limitations of the sort proposed by petitioners on the activities of the State Bar (see, e.g., S.C.A. 42 and A.B. 1482, 1983-84 Reg. Sess. both of which measures failed passage).

The source of funds criterion is similarly unworkable. Governmental agencies today frequently obtain revenues from sources other than general tax revenues. User charges are a

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character of the powers which its various political and municipal organizations shall possess;

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common revenue source for parks, recreation, sanitation, transportation, and electric power agencies, among others. Government regulatory agencies typically receive fees from those whom they regulate. Determining whether an entity is a government agency by its revenue sources would require courts to trace funds to their revenue source, leading the courts into a factual and legal quagmire. In this connection, while the present charge imposed on attorneys may be properly characterized as a regulatory fee, there would be no constitutional impediment in imposing an identical charge upon attorneys as a group as an excise tax for general revenue purposes. *People v. Coleman*, 4 Cal. 46, 49 (1854) overruled on other grounds 34 Cal. 432, 458 (1868); *Roth Drug, Inc. v. Johnson*, 13 Cal. App. 720, 739-740 (1936). Hence, the fee or tax dichotomy in this instance would appear to have absolutely no significance. Moreover, as a criterion for determining the scope of governmental speech, it could be used to silence those agencies whose information and expertise is most needed in the debate on public issues. Insurance regulation provides one example among many. Governmental agencies that regulate the insurance industry may obtain substantial revenue from fees paid by regulated insurers. See, e.g., Cal. Ins. Code Sec. 12970, *et seq.* This fact should not be a basis for depriving the public and the Legislature of the expertise and informed judgment of these governmental regulators on matters such as insurance industry reform and general tort reform.

Finally, whether an agency governs a geographic portion of the state is not a useful criterion for deciding what is a governmental agency. This test would call into question the numerous governmental agencies in California created over the years that do not govern a portion of the state but regulate selected activities or persons. See J.A. Vol. III at 567-68. See also, the State Assistance Fund for Energy, California Business and Industrial Development Corporation, commonly known as

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and the settled decisions of its highest courts on this subject will be regarded as authoritative by the courts of the United States; for it is a question that relates to the internal constitution of the body politic of the state." *Clairborne County v. Brooks*, 111 U.S. 400, 410 (1884).

See also *Fallbrook Irrigation District v. Bradley*, 164 U.S. 112, 154, 155, 174 (1896).<sup>10</sup>

The Supreme Court of California has determined that the laws of California "envision the [State Bar of California] as a governmental agency" (J.A. Vol. III at 566) and that the activities challenged by petitioners are within the State Bar's statutory authority (J.A. Vol. III at 578, 585-586). Under established precedent, deference is given to State determinations concerning these matters of state law. *Smiley v. Kansas*, 196 U.S. 447, 455 (1905); *Quong Ham Wah Co. v. Industrial Acci. Com.*, 255 U.S. 445, 448 (1921); and *Garner v. Louisiana*, 368 U.S. 157, 166 (1961). This Court should not disturb the determination of the Supreme Court of California concerning the structure and powers of a California governmental agency, the State Bar of California.

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SAFE-BIDCO (Cal. Fin. C. Sec. 32000, *et seq.* (effective January 1, 1990, Chapter 1040 of the Statutes of 1989 will rename this corporation the State Assistance Fund for Enterprise, Business and Industrial Development Corporation)).

<sup>10</sup> This is not a case in which Congress has sought to regulate an aspect of state government. See, *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985). Furthermore, the structure and function of governmental entities are integral to state sovereignty, unlike the minimum wage and overtime requirements at issue in *Garcia*.

## II. THE ROLE OF THE STATE BAR IN IMPROVING THE ADMINISTRATION OF JUSTICE AND ADVANCING THE SCIENCE OF JURISPRUDENCE SERVES AN IMPORTANT GOVERNMENTAL INTEREST

### A. The State Bar Serves the Public Interest in Improving the Administration of Justice and Advancing the Science of Jurisprudence

As a governmental agency devoted to improving the administration of justice and advancing the science of jurisprudence, the State Bar plays an important and unique role in the legislative process.

The State Bar is closely linked to the Judicial Council through the power to appoint council members and as a constituent agency in the Judicial Branch. These linkages facilitate a coordinated approach to law reform that has resulted in a number of joint efforts by the Judicial Council and State Bar to improve the administration of justice in California. Over 40 years ago, the State Bar and Judicial Council jointly redrafted the rules governing appellate procedure. 14 Cal. St. B.J. 372 (1939); Belcher, *President's Message*, 17 Cal. St. B.J. 357-358 (1942); Belcher, *The Bar and The War*, 18 Cal. St. B.J. 304, 306-308 (1943). Subsequently, the State Bar worked with the judicial Council on revisions to Article VI of the California Constitution pertaining to the judiciary. McAuliffe, *Message of the President*, 23 Cal. St. B.J. 1, 3 (1948). Over the years the State Bar and the Judicial Council have worked together in formulating and sponsoring proposals concerning the selection of judges and the operation of the Commission on Judicial Performance. Finger, *Report of the Board of Governors*, 43 Cal. St. B.J. 635, 636-639 (1968); Casey,

*Annual Report of the Board of Governors*, 51 Cal. St. B.J. 550, 560, 562 (1976); *Annual Report of the Board of Governors*, 50 Cal. St. B.J. 422, 434 (1975); *Annual Report of the Board of Governors*, 49 Cal. St. B.J. 607, 617-618 (1974). Former Chief Justice of the California Supreme Court, Phil S. Gibson, stated in 1957 that "every major reform in which the [Judicial] Council has participated since I have been Chairman has been the joint effort of the State Bar and the Judicial Council . . . ." Gibson, *For Modern Courts*, 32 Cal. St. B.J. 727, 728 (1957).

In recent years, the State Bar and Judicial Council jointly cosponsored a legislative proposal to permit arbitration as an alternative to court trial in superior court cases. Cal. Code of Civ. Proc. Sec. 1141.10, *et seq.* Subsequently, the State Bar assisted the Judicial Council in implementing this arbitration system, including the preparation and adoption of rules for the selection of arbitrators in civil cases pursuant to legislative direction. See Cal. Rules of Court, rule 1600, *et seq.* The State Bar also supported increasing the jurisdictional limits for arbitration. Cal. Code Civ. Proc. Sec. 1141.11. In 1985, these two agencies formed a Joint Commission on Civil Discovery which conducted an extensive study of discovery problems and proposed a new discovery act which was largely adopted by the Legislature as the Civil Discovery Act of 1986. Cal. Code Civ. Proc. Sec. 2016, *et seq.*; *Annual Report*, 5 Cal. Law. 70, 78 (1985). Currently, the State Bar and Judicial Council have formed a Consortium on Trial Court Delay Reduction to implement a major statewide statutory initiative to reduce trial court delay. The State Bar was a cosponsor of that delay reduction statute. Cal. Gov't Code Sec. 68600, *et seq.* Official joint efforts such as

these are possible only because both the Judicial Council and the State Bar are governmental agencies.

As a general matter, the State Bar, as a governmental agency with substantial expertise on legal processes and substantive laws, is a major source of valuable information to the Legislature on legislative proposals. The State bar played a major role in the enactment of the California Administrative Procedures Act. See, e.g., *Proceedings*, 10th Annual Meeting (1937), pp. 138-142; *Proceedings*, 11th Annual Meeting (1938), pp. 83-93, 200, 235, 372; *Proceedings*, 12th Annual Meeting (1939), pp. 36, 69, 172, 180, 193, 278, 283; *Committee on Administrative Agencies and Tribunals* - 1941-42, 18 Cal. St. B.J. 422 (1943); *Report of Committee on Administrative Agencies and Tribunals*, 19 Cal. St. B.J. 284 (1944); *Editorials*, *Administrative Agencies*, 19 Cal. St. B.J. 1 (1944); Kleps, *The California Administrative Procedures Act*, 22 Cal. St. B.J. 391 (1947). Subsequently, the State Bar has proposed amendments to improve the operation of the act. *Committee Reports*, *Administration of Justice*, 42 Cal. St. B.J. 708, 715 (1967). The State Bar was also instrumental in the adoption of the Uniform Commercial Code (Gray, *Report of the Board of Governors*, 39 Cal. St. B.J. 40, 50-51 (1951)), the Evidence Code (Mack, *President's Message*, 40 Cal. St. B.J. 119 (1965); Mack, *Annual Report of the Board of Governors*, 40 Cal. St. B.J. 659, 665 (1965)) and the most recent comprehensive revision of the Corporations Code (*Annual report of the Board of Governors*, 50 Cal. St. B.J. 422, 437 (1975)).

In 1981, with State Bar sponsorship and support, the Legislature enacted a program administered by the State Bar to use mandatory interest on lawyers' trust accounts (IOLTA) to assist the funding of legal service programs

for the poor. Secs. 6210-6228. In 1982 the State Bar proposed and the Legislature enacted a statutory will that eliminated the need to use an attorney to prepare simple wills. Cal. Pro. Code Sec. 6200, *et seq.*

Former California legislators have noted the importance of the State Bar's legislative activities. For example, in 1961, State Senator Edwin J. Regan, Chairman of the Senate Judiciary Committee commented:

"It is inconceivable that these expressly delegated responsibilities and functions [under Sec. 6031] could be carried out effectively and successfully without recourse to legislative activity - that is, without proposing legislation and making known the bar's recommendations to legislative committees. The results of the State Bar's studies and recommendations on many subjects of tremendous complexity and importance would virtually be lost to the members of the Legislature if it were not possible for your legislative representatives to appear as advocates before legislative committees." Regan, *The State Bar's Role in the Legislature*, 36 Cal. St. B.J. 951-952 (1961)

To be useful, the State Bar's input to the Legislature must be timely. Comments on legislative proposals must be submitted to the Legislature within the tight deadlines for committee and floor action. Throughout its history the State Bar has functioned effectively within these legislative deadlines. The Legislature would lose an irreplaceable resource if the State Bar were prevented by burdensome procedures from communicating with the Legislature in a timely manner.

The State Bar provides the Legislature with legal expertise in both procedural and substantive areas relating to the science of jurisprudence and the administration of justice. Individual lawyers and regional and local bar associations have no obligation to provide this expertise to the Legislature. Furthermore, the State Bar's input to the Legislature is unique in that the knowledge of the experienced practitioners is provided by an agency whose structure and legislative oversight assures a public interest perspective.

Through its positions on matters relating to the science of jurisprudence and the administration of justice, the State Bar has exercised a leadership role in the public interest even in the face of opposition by regional and specialty bar associations and individual lawyers. Public protection has been a central concern of major legislative proposals made by the State Bar. On several occasions the State Bar has proposed a requirement that all practicing lawyers in California be covered by professional liability insurance. In connection with its most recent proposal, the State Bar conducted a mandatory survey of its members pursuant to a statutory requirement. Sec. 6033. This survey, although unpopular with many attorneys, was considered necessary by the Legislature and the State Bar to provide information on the relationship between the absence of professional liability insurance and public harm from uninsured lawyers. The State Bar also proposed mandatory continuing legal education, and the Legislature recently enacted this proposal. 1989 Cal. Stat. 1425. Many lawyers opposed these proposals, although they would provide additional protection to the public, on the ground that they were not in the economic interest of lawyers. In 1989, the State Bar sponsored a bill to streamline the procedure for a superior court to assume

jurisdiction over the practice of an attorney who is incapable of devoting the time and attention to, and providing the quality of service for, his or her clients because of the excessive use of alcohol or drugs, physical or mental illness or other infirmity or other cause. 1989 Cal. Stat. 582.

This public interest orientation is also reflected in other proposals made by the State Bar for improving the administration of justice. The Trial Court Delay Reduction Act, which the State Bar cosponsored in 1986, requires greater judicial management and control of civil cases by judges. The discovery reforms which the State Bar and Judicial Council cosponsored in 1985 included constraints on discovery. These proposals reflect the State Bar's concern for improving the administration of justice and the science of jurisprudence even in the face of opposition from substantial segments of the legal profession.

As structured and regulated, the State Bar's position on legislative matters are those of the State Bar as an entity. When the State Bar takes a position, it does not purport to speak for, and the Legislature does not consider the position to represent the views of, the majority of lawyers or individual lawyers in the State. J.A. Vol. II at 232-233. The State Bar's position on a matter relating to the science of jurisprudence or the administration of justice is an institutional position, like that of any other governmental entity.

The State Bar also has no monopoly on access to the Legislature. Like other public agencies, the State Bar is simply one voice among many. Regional and specialty bar

associations and individual lawyers have substantial input into the legislative process. Indeed, unlike these private groups and individuals, the State Bar as a governmental agency makes no campaign contributions, does not endorse candidates for office, and is prohibited from taking positions on ballot issues. The State Bar has not drowned out private communication from individual lawyers or regional or specialty bar associations in the legislative process. The fact that the State Bar has taken positions on legislation has not prevented any lawyer in the State, or any group of lawyers, from taking opposing positions.

**B. Issues Pertaining to the Administration of Justice and the Science of Jurisprudence are Inherently Political and Ideological**

Petitioners and supporting amici urge this Court to limit the State Bar's participation in "political" and "ideological" issues based on the application of standards applied to labor unions. In the labor union context, the labels "political" and "ideological" may have meaning in the contrast between public issues in the political arena with the private, largely economic, issues in labor-management interactions. These labels are inappropriate, however, for delineating the proper scope of the State Bar's activities.

By statute, the State Bar of California is authorized to "aid in all matters pertaining to the advancement of the science of jurisprudence or the improvement of the administration of justice." Sec. 6031. As matters of public policy and government which can only be resolved in the

Legislature and the Courts, issues pertaining to the administration of justice and the science of jurisprudence are inherently political. Issues of civil and criminal procedure, administrative procedure, selection of judges, strategies for reducing trial and appellate court delay, alternative dispute resolution mechanisms, the structure and jurisdiction of particular courts, and the adequacy of representation in civil and criminal cases are some of the matters relating to the science of jurisprudence and the administration of justice which the California Legislature and the State Bar have considered on a regular basis. At certain times, these issues are relatively noncontroversial, even when substantial changes are proposed. At other times, they are highly controversial. Whether controversial or not, they are all "political." They are at the heart of what government is about. Consequently, petitioners' claim that the State Bar be required to specifically justify any position in a "political" matter would potentially sweep within it every issue regarding the science of jurisprudence and the administration of justice.

In addition, these issues pertaining to the science of jurisprudence and the administration of justice are inherently "ideological." "Ideology" has been defined as "visionary speculation" and "a systematic scheme or coordinated body of ideas or concepts [especially] about human life or culture." Webster's Third New International Dictionary (1981 unabridged). In the broad sense all administration of justice issues are ideological: our system of justice is premised on an ideology of fairness, due process, and equal protection.

As asserted by petitioners and amici, the categories of "political" and "ideological" are labels used to

describe positions of the State Bar with which they disagree. These are purely subjective terms in the context of issues of public policy and government. In practical effect, these labels would permit those who disagree with the positions of governmental agencies to exercise a veto over governmental speech.

The California Legislature intends that the State Bar, and other governmental agencies with special expertise and skills, participate when issues regarding the administration of justice or the science of jurisprudence are considered by the Legislature. We believe this participation is in the public interest. It is important that the Legislature continue to receive the positions of the State Bar unfettered by disruptive litigation or procedures designed to restrict the Legislature's access to the valuable input which the State Bar has long provided on matters relating to the science of jurisprudence and the administration of justice.

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#### CONCLUSION

For the foregoing reasons, amicus curiae urges this Court to affirm the decision of the California Supreme Court.

Respectively Submitted,

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